



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### ACUS 2015 Chief FOIA Officer Report

Chief FOIA Officer: Shawne McGibbon, General Counsel

**The Administrative Conference of the United States (ACUS) is a small federal agency that receives far fewer than 1,000 FOIA requests annually. As a smaller-volume agency, we have opted for the “shorter” report per OIP’s 2015 guidelines.**

#### Section I: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's [FOIA Memorandum](#) and the Attorney General's [FOIA Guidelines](#) is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

#### **FOIA Training**

*1. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any FOIA training or conference during the reporting period such as that provided by the Department of Justice?*

- *Such training or events can include offerings from OIP, your own agency or another agency or organization.*

*--Yes.*

*2. Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.*

*--100%*

*3. In the 2014 Chief FOIA Officer Report Guidelines, OIP asked agencies to provide a plan for ensuring that core, substantive FOIA training is offered to all agency FOIA professionals at least once each year. Please provide the status of your agency’s implementation of this plan.*

- *Include any successes or challenges your agency has seen in implementing your plan.*

*--Fully implemented. In-person and other training tools were used, e.g., the FOIA Best Practices Workshop on “Proactive Disclosures & Making Online Information More Useful.”*

## **Discretionary Releases**

4. Does your agency have a distinct process or system in place to review records for discretionary release?

- If so, please briefly describe this process.

--There is an agency-wide policy to release as much information as possible.

- If your agency is decentralized, please specify whether all components of your agency have such a process or system in place?

--N/A

5. During the reporting period, did your agency make any discretionary releases of information?

--No. ACUS received 17 FOIA requests in FY2014. Of those, all information that was in possession of the agency was granted, with the exception of one request for information on the personal contact information for all ACUS public and private-sector members (not ACUS employees). In that case, the agency determined that only the release of the names and professional affiliations of the individuals was appropriate, but personal contact information (Personally Identifiable Information) was withheld under FOIA Exemption 2.

6. What exemption(s) would have covered the material released as a matter of discretion? For a discussion of the exemptions that allow for discretionary releases, please see OIP's guidance [on implementing the President's and Attorney General's FOIA Memoranda](#).

--N/A. As stated in the example above, Exemption 2 was used in denying the requested personal contact information. No discretionary information was released, unless the list of names and affiliations counts as a discretionary release. The agency views the release of names and affiliations as a partial release, but not a discretionary release.

7. Provide a narrative description, as well as some specific examples, of the types of information that your agency released as a matter of discretion during the reporting year.

--See #5 and #6 above.

8. If your agency was not able to make any discretionary releases of information, please explain why.

--The agency only had one opportunity to release discretionary information, but opted not to provide that information, as described in question 5 above.

## **Other Initiatives**

9. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here.

- If any of these initiatives are online, please provide links in your description.

--The presumption of openness is described "up front" on the agency's FOIA page. Specifically, in the description of the agency's FOIA program, it states: "formal FOIA requests are unnecessary if you are seeking publicly available information. If you are unable to find the document you are seeking on our website, please contact David Pritzker, the FOIA Liaison, for assistance prior to filing a formal FOIA request. By seeking assistance prior to filing a formal request, the response time may be faster." See our FOIA page for the full description: <https://www.acus.gov/foia>.

## **Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests**

As the Attorney General emphasized in his [FOIA Guidelines](#), "[a]pplication of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." It is essential that agencies effectively manage their FOIA program.

Please answer the following questions to describe the steps your agency has taken to ensure that your management of your FOIA program is effective and efficient. You should also include any additional information that describes your agency's efforts in this area.

### **Processing Procedures**

1. For Fiscal Year 2014, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2014 Annual FOIA Report.

- Please note here if your agency did not adjudicate any requests for expedited processing during Fiscal Year 2014.

--ACUS did not adjudicate any requests for expedited processing.

2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less.

--N/A

### **Requester Services**

3. Does your agency notify requesters of the mediation services offered by the Office of Government Information Services (OGIS) at the National Archives and Records Administration? See OIP Guidance, "[Notifying Requesters of the Mediation Services Offered by OGIS.](#)" (July 9, 2010)

--Yes; in our FOIA regulations, found here: <http://www.acus.gov/publication/acus-foia-and-privacy-act-final-regulation>.

**4. When assessing fees, does your agency provide a breakdown of how FOIA fees were calculated and assessed to the FOIA requester? For example, does your agency explain the amount of fees attributable to search, review, and duplication? See OIP Guidance, “*The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications.*” (Nov. 22, 2013)**

--ACUS did not assess any fees in 2014.

**5. If estimated fees estimates are particularly high, does your agency provide an explanation for the estimate to the requester? See *id.***

--N/A

#### **Other Initiatives**

**6. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc., please describe them here.**

--ACUS has a very small agency and a very small FOIA program. Our program is already extremely efficient. Most responses are made within one day of receipt. There are no redundancies since only two individuals manage the program and they communicate with each other frequently to determine the most efficient and effective way to respond to any non-routine FOIA request.

### **Section III: Steps Taken to Increase Proactive Disclosures**

Both the [President](#) and [Attorney General](#) focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

#### **Posting Material**

**1. Does your agency have a distinct process or system in place to identify records for proactive disclosure? If so, please describe your agency’s process or system.**

--Yes; ACUS has a general policy of releasing as much information as possible. The agency has 16 FTEs (when fully staffed), all in a single location, all of whom are aware of this policy. Information about the agency’s current research projects and scheduled meetings is posted on the website promptly.

**2. Does your process or system involve any collaboration with agency staff outside the FOIA office? If so, describe this interaction.**

*--Yes; if the request likely includes records maintained by non-FOIA staff, then the FOIA staff collaborates with other agency staff to locate the responsive records.*

**3. Describe your agency's process or system for identifying "frequently requested" records that should be posted online.**

*--The most frequently requested records are ACUS's recommendations from 1968-1995. Although the agency closed in 1995 and did not reopen until 2010 due to a lapse in appropriations, ACUS took the step of retrieving, formatting and posting in the Federal Register all old ACUS recommendations. Other historical ACUS documents are available on request. Other than the recommendations, there are no other frequently requested records (other than requests for non-existent prison records). In any event, almost all of the documents generated since 2010 are posted on the agency's website because of FACA requirements and our general policy of transparency.*

**4. Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.**

*--Here is an example of an ACUS project page: <https://www.acus.gov/research-projects/benefit-cost-analysis-independent-regulatory-agencies>. Note that all reports (and any draft reports), meeting agendas, related recommendations from ACUS 1.0 (1968-1995), and any public comments are included on the page. This exceeds the requirements of FACA, because we voluntarily meet FACA requirements for our "subcommittee" meetings.*

**Other Initiatives**

**5. If there are any other steps your agency has taken to increase proactive disclosures, please describe them here.**

*--The agency's website also provides live webcasts of meetings and an archive of past meeting webcasts.*

**Section IV: Steps Taken to Greater Utilize Technology**

A key component of the President's [FOIA Memorandum](#) was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that that describes your agency's efforts in this area.

**Making Material Posted Online More Useful**

*1. Beyond posting new material, is your agency taking steps to make the posted information more useful to the public, especially to the community of individuals who regularly access your agency's website?*

- *Steps can include soliciting feedback on the content and presentation of posted material, improving search capabilities on your agency website, posting material in open formats, making information available through mobile applications, providing explanatory material, etc.*

*--We have won awards for our website in the past based on its ease of use. For example, Tripwire Magazine voted our website #34 out of 35 most visually appealing government websites (internationally). The magazine gives particular attention to sites that have an “accommodating user interface to provide users a better experience.” The usability of our website has been improved even since the time of that award. Moreover, we have been invited by the American Bar Association to help them improve the usability of their website (because they believe our website is a model). Our budget is too small to develop mobile applications. Moreover, the content on our website is such that it would have limited utility in a mobile application. However, ACUS was one of the first federal agencies to have its .gov domain hardcoded into major web browsers as HTTPS-only. This gives our website visitors a secure search environment, and protects our users (including our employees) from malicious interceptions, etc. For more info, read this article from GSA’s 18f group: <https://18f.gsa.gov/2015/02/09/the-first-gov-domains-hardcoded-into-your-browser-as-all-https/>.*

*2. If yes, please provide examples of such improvements.*

- *If your agency is already posting material in its most useful format, please describe these efforts.*

*--See examples in items III.4 and III.5 above.*

*3. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post?*

*--Yes.*

*4. If so, please briefly explain what those challenges are.*

*-- ACUS has an ongoing project with HEIN Online to make many archived boxes of ACUS historical documents (1968-1995) accessible both through their online service and our website. The challenges have been to: 1) sift through all of the materials and determine which documents would be of greatest value to our stakeholders; 2) determine which documents can be posted legally (i.e., to avoid copyright, PII, and other legal issues); and 3) tag the documents to make them more easily searchable.*

### **Other Initiatives**

*5. Did your agency successfully post all four quarterly reports for Fiscal Year 2014?*

- *Please see OIP’s [guidance](#) for posting of quarterly reports to ensure that your agency is following all required steps (including using the correct file type and URL structure) so that*

*your quarterly reports are properly appearing on FOIA.gov. (If your reports are posted to your website but not appearing on FOIA.gov, please contact OIP in order to resolve the issue.)*

*--Yes; the reports are on our website. As for the documents not appearing on FOIA.gov, we believe the folder with the zipped files is not being recognized by our server, and is being automatically directed /linked to our FOIA page (instead of the preferred OIP location and format). This apparently requires some sort of server machinations. We do not seem to have the capability in-house to accomplish this.*

*6. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2015.*

*--All ACUS quarterly reports are consistently posted on our website in a timely manner. We continue to work with OIP to resolve any technical difficulties in posting to FOIA.gov. In the meantime, since our agency typically has less than 20 FOIA requests per year AND NO BACKLOGS, anyone wanting quarterly data can easily find the reports on our website.*

*7. Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible? See OIP Guidance, "The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications." (Nov. 22, 2013) If yes, what are the different types of electronic means are utilized by your agency to communicate with requesters?*

*--Yes; FOIA requesters may submit an online form. The agency typically responds to those requesters via email, unless they indicate a different preference. If there were a request for a large number of documents, we would likely use Dropbox to avoid sending very large files.*

*8. If your agency does not communicate electronically with requesters as a default, are there any limitations or restrictions for the use of such means? If yes, does your agency inform requesters about such limitations? See *id.**

*--A large number of our requests come from federal prisoners. Prisoners do not have Internet access, so we must tell them via U.S. Mail that we have no responsive records.*

## **Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs**

The [President](#) and the [Attorney General](#) have emphasized the importance of improving timeliness in responding to requests. This section your Chief FOIA Officer Report addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations. **For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2014 Annual FOIA Report and, when applicable, your agency's 2013 Annual FOIA Report.**

**Simple Track:** Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a

category for “simple” requests, which are those requests that are placed in the agency’s fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

**1. Does your agency utilize a separate track for simple requests?**

--Yes

**2. If so, for your agency overall in Fiscal Year 2014, was the average number of days to process simple requests twenty working days or fewer?**

--Yes

**3. Please provide the percentage of requests processed by your agency in Fiscal Year 2014 that were placed in your simple track.**

--100%

**4. If your agency does not track simple requests separately, was the average number of days to process all non-expedited requests twenty working days or fewer?**

--N/A

**Backlogs**

**BACKLOGGED REQUESTS Note: ACUS has had no backlogs since it began operations in mid-2010.**

**5. If your agency had a backlog of requests at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013?**

--N/A

- *If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:*
  - *An increase in the number of incoming requests*
  - *A loss of staff*
  - *An increase in the complexity of the requests received*

**6. If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2014. If your agency did not receive any requests in Fiscal Year 2014 and/or has no request backlog, please answer with "N/A."**

--N/A

- *To calculate your agency’s percentage, you must divide the number of backlogged requests reported in Section XII.A. of your Fiscal Year 2014 Annual FOIA Report by the number of*

requests received in Fiscal Year 2014, which can be found in Section V.A. of your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.

### **BACKLOGGED APPEALS**

7. If your agency had a backlog of appeals at the close of Fiscal Year 2014, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2013?

--N/A

- If not, explain why and describe the causes that contributed to your agency not being able to reduce backlog. When doing so, please also indicate if any of the following were contributing factors:
  - An increase in the number of incoming appeal
  - A loss of staff
  - An increase in the complexity of the appeals received

8. If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2014. If your agency did not receive any appeals in Fiscal Year 2014 and/or has no appeal backlog, please answer with "N/A."

--N/A

- To calculate your agency's percentage, you must divide the number of backlogged appeals reported in Section XII.A. of your Fiscal Year 2014 Annual FOIA Report by the number of appeals received in Fiscal Year 2014, which can be found in Section VI.A. of your Annual FOIA Report. Once divided, you can multiply that number by 100 to get the percentage.

### **Status of Ten Oldest Requests, Appeals, and Consultations**

#### **TEN OLDEST REQUESTS**

9. In Fiscal Year 2014, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

--N/A

10. If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2013 Annual FOIA Report. If you had less than ten total oldest requests to close, please indicate that.

--N/A

- For example, if you only had seven requests listed as part of your "ten oldest" in Section VII.E. and you closed six of them, you should note that you closed six out of seven "oldest" requests.

11. Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?

--N/A

#### **TEN OLDEST APPEALS**

12. In Fiscal Year 2014, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

--N/A

13. If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2013 Annual FOIA Report. If you had less than ten total oldest appeals to close, please indicate that.

--N/A

- For example, if you only had seven appeals listed as part of your "ten oldest" in Section VII.C.(5) and you closed six of them, you should note that you closed six out of seven "oldest" appeals.

#### **TEN OLDEST CONSULTATIONS**

14. In Fiscal Year 2014, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2013 Annual FOIA Report?

--N/A

15. If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2013 Annual FOIA Report. If you had less than ten total oldest consultations to close, please indicate that.

--N/A

- For example, if you only had seven consultations listed as part of your "ten oldest" in Section XII.C. and you closed six of them, you should note that you closed six out of seven "oldest" consultations.

#### **Additional Information on Ten Oldest Requests, Appeals and Consultations & Plans**

16. Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2013.

--N/A

17. If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please

***provide the date the request was initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending.***

*--N/A*

***18. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those “ten oldest” requests, appeals, and consultations during Fiscal Year 2015.***

*--N/A*

#### ***Use of the FOIA’s Law Enforcement Exclusions***

***Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2014?***

*--No*

***If so, please provide the total number of times exclusions were invoked.***

*--N/A*

#### ***Success Story***

*--The agency, despite its small size, has a model website and has received praise for its usability. It has also been praised for being an early adopter among federal agencies of technology that provides a secure website environment for users and the agency itself. We believe this enhances the level of information usability and transparency at our agency. Note response to question IV.1 for further information on this.*